

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
3

4 MARVIN M. CAMPBELL,  
5 Movant,

No. C 11-0073 CW  
CR 09-0640 CW

6 v.

7 ORDER GRANTING  
8 UNITED STATES OF AMERICA,  
9 Respondent.  
10

CERTIFICATE OF  
APPEALABILITY  
(Docket No. 122)

---

---

10 Movant Marvin Campbell filed a motion pursuant to 28 U.S.C.  
11 § 2255 to vacate, set aside or correct his sentence. On April 7,  
12 2014, the Court entered an order denying the § 2255 motion.  
13 Movant seeks a certificate of appealability regarding the denial  
14 of his motion.

15 Movant's right to appeal the Court's denial of his § 2255  
16 motion is governed by 28 U.S.C. § 2253(c), which states,

17 (1) Unless a circuit justice or judge issues a  
18 certificate of appealability, an appeal may not be taken  
19 to the court of appeals from--

20 (A) the final order in a habeas corpus proceeding in  
21 which the detention complained of arises out of process  
22 issued by a State court; or  
23 (B) the final order in a proceeding under section 2255.

24 (2) A certificate of appealability may issue under  
25 paragraph (1) only if the applicant has made a  
substantial showing of the denial of a constitutional  
right.

(3) The certificate of appealability under paragraph (1)  
shall indicate which specific issue or issues satisfy  
the showing required by paragraph (2).

28 U.S.C. § 2253(c)(1)-(3). The Ninth Circuit has interpreted the  
phrase "circuit justice or judge" to include district court

1 judges. United States v. Asrar, 116 F.3d 1268, 1269-70 (9th Cir.  
2 1997). A certificate of appealability should be granted "only if  
3 the applicant has made a substantial showing of the denial of a  
4 constitutional right." 28 U.S.C. § 2253(c)(2).

5 The Court finds that Movant has made a sufficient showing of  
6 the denial of a constitutional right on his ineffective assistance  
7 of counsel claim based on counsel advising Movant not to file a  
8 motion to suppress and, instead, advising him to enter a guilty  
9 plea. Accordingly, the application for a certificate of  
10 appealability is GRANTED (Docket No. 122).

12 IT IS SO ORDERED.

14 Dated: 5/30/2014

  
15 CLAUDIA WILKEN  
16 United States District Judge